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In re Application of Souissi et al.	:	
Application No. 09/651,382	:	Decision on Petition
Filing Date: August 29, 2000	:	
Attorney Docket No. PF01963NA	:	

This is a decision on the petition under 37 CFR 1.181 filed July 15, 2004, requesting the Office withdraw the holding of abandonment. The Office regrets the delay in the issuance of the instant decision.

The petition is **granted**.

Background

The Office mailed a final Office action on February 13, 2002.

Petitioner filed a Notice of Appeal on May 1, 2002.

Petitioner filed an Appeal brief on July 1, 2002.

The Office mailed a non-final Office action on September 13, 2002.

An amendment was filed on December 12, 2002.

The Office mailed a non-final Office action on February 28, 2003.

Petitioner filed a "Status Request" on February 20, 2004. The Status Request stated the last paper received by petitioner was the "Office action date 2/28/03." The Status Request stated the last paper submitted by petitioner was a "Response to Office Action."

The Office mailed a Notice of Abandonment on April 20, 2004. The Notice stated the application was abandoned because the Office had not received a reply to the February 28, 2003 Office action.

A "Petition Under 37 C.F.R. 1.181 for Withdrawal of Abandonment" was filed July 15, 2004.

Petitioner filed a Status Request on February 23, 2005.

Petitioner filed an Information Disclosure Statement on March 18, 2005.

Petitioner filed a Status Request on March 9, 2007.

Petitioner filed a Status Request on November 7, 2007.

On an unknown date, the application file was lost and steps were taken to reconstruct the file.

On April 20, 2009, petitioner supplied the Office with a copy of correspondence involving the application in order to assist the Office in reconstructing the file.

Petitioner filed a Status Request on August 18, 2009.

Discussion

The petition asserts a reply was timely filed by facsimile transmission in response to the February 28, 2003 Office action. Petitioner states the following items were filed May 28, 2003:

- (1) Transmittal letter (2 pages),
- (2) Request for Reinstatement of Appeal (1 page), and
- (3) Supplemental Appeal Brief (19 pages).

Petitioner has supplied a copy of each of the items listed above.

The transmittal letter included a certificate of transmission dated May 28, 2003, which was the due date for responding to the Office action. The petition and the certificate of transmission are both signed by Roland K. Bowler II.

Petitioner has supplied an "Auto-Reply Facsimile Transmission" from the Office indicating 22 pages were received by facsimile transmission on May 28, 2003.

Petitioner has supplied a copy of the sending unit's report confirming 22 pages were sent by facsimile transmission on May 28, 2003.

One may prove the timely filing of papers by providing a showing in compliance with 37 CFR 1.8(b).

37 CFR 1.8(b) states,

In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the U.S. Patent and Trademark Office after a reasonable amount of time has elapsed from the time of mailing or transmitting of the correspondence, or after the application is held to be abandoned, or after the proceeding is dismissed, terminated, or decided with prejudice, the

correspondence will be considered timely if the party who forwarded such correspondence:

- (1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;
- (2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and
- (3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

The petition satisfies the requirements set forth in 37 CFR 1.8(b).

The holding of abandonment is hereby withdrawn and the application restored to pending status.

The instant decision is **not** a determination the May 28, 2003 reply, including the brief, does or does not comply with applicable regulations and other requirements. Instead, the decision is simply an indication the reply appears to be, at a minimum, a bona fide reply. If the examiner determines the reply is lacking in some respect, the examiner should issue a letter which identifies the deficiencies and sets a 1-month shortened statutory period for petitioner to file a reply correcting the deficiencies.

Technology Center Art Unit 2684 will be informed of the instant decision and the application will be further examined in due course.

Telephone inquiries regarding this communication should be directed to Petitions Attorney Steven Brantley at (571) 272-3203.



Charles Steven Brantley
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Office of Petitions